IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1452 OF 2006

Vallabh Mulji Dedhiya, .. Petitioner
Vs
The State of Maharashtra, .. Respondent

Mr P.K.Dhakephalkar, senior counsel i/b Mr Sanjay P Prabhu, for the petitioner.
Mr S.R.Borulkar, PP, for the respondent-State.
Mr A.P.Mundargi, senior counsel for Inspector of Police.

CORAM : D.B.BHOSALE, J.

DATED : 14.08.2006

P.C.:

1. Heard the learned counsel for the parties.

2. In this petition, the petitioner has made the following prayers:-

> "(a) The Hon'ble Court be pleased to quash and dismiss the C.R.No.I-74/2006 registered with Bhayander Police Station, Dist.Thane.
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> (b) this Hon'ble Court may be pleased to direct the Bhayander Police Station, Dist: Thane, not to arrest the petitioner in C.R.No.I-74/2006, registered with them.
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> (c) In the alternative, this Hon'ble Court be pleased to release the petitioner on bail on such terms and conditions as this Hon'ble Court may deem fit and proper."

3. This Court while issuing rule on 7.7.2006 granted protection to the petitioner, not be arrested, till hearing of this petition. It appears that

despite this order the petitioner came to

be arrested on the very same day at 12.35 pm. According to the investigating officer, the aforesaid order passed by this Court was not communicated to him, whereas, according to the petitioner it was communicated to the officer at 11.30-11.45 pm. There is also a controversy whether the order was passed at 11.35 pm as stated by the petitioner or it was passed at 12.35 pm as claimed by the State. However, in view of the arrest of the accused and his production before the learned magistrate at 4.30pm on the same day, this Court on 14.7.2006 passed the following order:

> " On 7th July, 2066, this court passed the following order:
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> "Rule returnable on 14th July, 2006.Mr Mhaispurkar, the learned Addl.Public Prosecutor waives service for the State. The petitioner shall report to the Bhayandar police station on 8th July, 2006 at 11 am and will cooperate with the investigating officer as and when he is called for. Petitioner may not be arrested till the hearing of this application.
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> Adjourned to 14th July,2006."
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> 2. Today when the matter is called out it is stated by the learned counsel for the applicant that on 7th July, 2006 itself, the applicant informed the Bhayandar Police Station about the order passed by this Court by producing an ordinary copy of the order when he reported the said police station. It is pertinent to note that the order of 7th

July, 2006 was passed in the presence of the learned Addl.Public Prosecutor, who waived service of the application. Despite the fact that the petitioner served the police station with a copy of the order of this court, the applicant was arrested by the investigating officer Shri Ashok Vastrad, Senior Police Inspector and he was produced before the Magistrate at 4.35 pm on 7th July itself. Today the learned Public Prosecutor, after taking instructions from the concerned investigating officer, who is present in court, submitted that the concerned Magistrate of court no.8, Thane has passed an order of remand for 5 days. The applicant has challenged the order of the Magistrate before the Sessions Court at Thane and has also applied for bail. The learned Sessions Judge has adjourned the matter to 15th July, 2006.

3. Considering the aforesaid facts, it is a sorry state of affairs that even though this court has specifically directed the investigating officer not to arrest the applicant till the next date of hearing i.e. 14th July, 2006, the applicant was not only arrested but the investigating officer obtained an order or remand from the Magistrate for five days. The explanation offered by the learned Public Prosecutor that the applicant has not produced the order passed by this court but he received the same on 10th July, 2006 is nothing but an attempt to overcome the breach committed by the investigating officer. When the Addl.Public Prosecutor waived service for the State, it was his duty to inform the concerned police station/police officer about the order dated 7th July, 2006. It is also stated before me that even the learned Magistrate was also informed about the order of this court. If that is so he could not have ordered remand. Even assuming that no order was produced before the investigating officer as well as the Magistrate but by this fact they cannot absolve themselves. They could have verified and/or inquired about the oral intimation of the applicant about the order of this court before obtaining/passing the order of remand.

4. This act of the investigating officer as well as the learned Magistrate is nothing but over reach the order of this court. In view

> of the above facts, I am prima facie of the opinion, that the concerned investigating officer as well as the Magistrate of 8th Court, Thane have flagrantly committed breach of the order dated 7th July, 2006. With a view to give a chance to explain the breach, I pass the following order:
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> 4. The investigating officer Shri Ashok Vastrad and Ms S.T.Dande, the learned Magistrate, 8th Court, Thane are directed to show cause as to why proceedings under the Contempt of Courts Act be not initiated against them for wilfully flouting the order dated 7th July, 2006. Show cause notice is made returnable on 28th July, 2006.
> 5. I further direct that the applicant be released on bail forthwith on his executing bail bond in the sum of Rs.5,000/- with one surety in the like amount on condition that he shall not leave the city limits of Bhayandar and shall cooperate with the Investigating Officer whenever called for."

In response to the show cause notice issued by this Court the learned Magistrate submitted his reply dated 21.7.2006 and the concerned investigating officer has also filed reply affidavit. The petitioner has also filed affidavit in reply to the affidavit filed by the investigating officer. I perused the order passed by this Court as also the reply to the show cause notice submitted by the learned Magistrate and by the investigating officer. As a matter of fact, the learned counsel for the parties have fairly stated that the show cause notice need not be prosecuted further and it may be dropped. After having considered the submissions of the learned counsel for the parties and the aforesaid order passed by this court and the reply to the show cause notices filed by

the learned Magistrate as also by the investigating officer, I am of the view that the show cause notices issued against the Magistrate and the investigating officer need not be prosecuted further and they deserve to be dropped. Insofar as the main petition and the order of bail is concerned, I heard the learned counsel for the parties for some time.Mr Dhakephalkar, learned senior counsel for the petitioner submitted that he is prepared to withdraw the petition if the order of bail is maintained. He further submitted that the petitioner has no objection for granting liberty to the State to seek cancellation of bail by filing appropriate application in this Court. Further, he fairly stated that he has no objection for dropping the show cause notices. I heard Mr Mundargi, learned senior counsel for the investigating officer and Mr Borulkar, learned Public Prosecutor. All the learned counsel for the parties have agreed for the order that I proposed to pass and have fairly stated that I need not record reasons for the same. In the circumstances, I pass the following order:

(i) The writ petition is allowed to be withdrawn, as prayed for by Mr Dhakephalkar, learned senior counsel for the petitioner, and is disposed of as such.

(ii) The order of bail granted by this court vide

order dated 14.7.2006 is maintained.

(iii) It is open for the investigating agency to carry out further investigation in CR.No.I-74/2006 registered with Bhayandar Police Station, Dist.Thane

and take it to its logical conclusion.

(iv) Liberty to the State to apply for cancellation of bail on merits and on the grounds available in law.

(iv) The show cause notice issued by the aforesaid order dated 14.7.2006 is dropped.

(v) The writ petition is accordingly disposed of.

(D.B.BHOSALE,J.)